

**RULES OF PROCEDURE
CODE ENFORCEMENT APPEAL HEARINGS
CITY OF EVERETT HEARING EXAMINER**

SECTION 1: PURPOSE

Hearing Examiner Rules of Procedure are adopted to supplement the procedures established in the Everett Municipal Code, for the purpose of providing advance notice and guidance on how matters before the Examiner will be conducted. These rules shall apply to both appeals of notices of civil violations and orders and to notices of assessment of civil penalties. These rules are intended to address most circumstances that arise in code enforcement appeal proceedings. The possibility exists that an unforeseen situation may occur that does not lend itself to full, strict compliance with these rules. In such cases, the Hearing Examiner is obligated to exercise reasonable and necessary discretion when applying these rules to unusual circumstances. These Rules of the Hearing Examiner are adopted pursuant to EMC 1.20.240(F)(3).

SECTION 2: INTERPRETATION AND WAIVER OF RULES

These rules shall be liberally construed to promote justice and facilitate fair hearings in code enforcement matters. The decisions of the Hearing Examiner will not be based on compliance or noncompliance with these rules. The Hearing Examiner may waive or alter the provisions of any of these rules in order to serve the ends of justice. The Hearing Examiner may amend these rules from time to time consistent with their authority under code.

SECTION 3: DEFINITIONS

“Appellant” means any person who received a notice of violation and order to correct (NOVO) or stop work order from the City of Everett and who files a timely and complete application for appeal, including the required appeal fee, consistent with EMC 1.20.260.

“City” means the City of Everett, Washington.

“Hearing Clerk” means a person designated by the City of Everett Mayor, or designee, to assist the Hearing Examiner in his/her duties.

“Code Enforcement Officer” means an employee of the City who issued the NOVO or stop work order appealed from, or that employee’s designee, who represents the City in the hearing.

“Decision” means the final decision or order issued by the Hearing Examiner ruling on the merits of the appeal, which may also include direction to a party of the proceeding to act or to refrain from acting.

“EMC” means the Everett Municipal Code.

“*Ex parte communication*” means written or oral communications between a party and the Hearing Examiner about the merits of a matter pending before the Hearing Examiner. Written or oral communication on issues relating to appeal hearing procedure are not considered *ex parte* communication.

“*Hearing Examiner*” or “*Examiner*” means the Hearing Examiner or Hearing Examiner Pro Tem of the City of Everett as appointed by the Mayor. All jurisdictions, powers and authority for the Hearing Examiner also apply to the Hearing Examiner Pro Tem.

“*NOVO*” is the abbreviation used for a notice of violation and order to correct.

“*Open record hearing*” means an administrative hearing in which a record is developed through written and oral testimony and submission of evidence.

“*Order*” means a written determination of the Hearing Examiner which directs a party of the proceeding to act or to refrain from acting.

“*Party*” means the City of Everett and any Appellant(s) who have timely and completely appealed a notice of violation and order to correct or stop work order issued by the Code Enforcement Unit.

“*Record*” means all verbal testimony and written exhibits submitted and admitted at the open record hearing. The audio and/or video recording of the proceeding shall be included as part of the record. At the discretion of the Hearing Examiner, the record may be supplemented after the closing of testimony.

SECTION 4: JURISDICTION

The Hearing Examiner’s powers and duties are established in EMC 1.20.240, which confers on the Examiner jurisdiction to hear and decide timely filed, complete appeals of Code Enforcement orders.

SECTION 5: HEARING EXAMINER

- 5.1 All hearings shall be presided over by the Hearing Examiner or Hearing Examiner Pro Tem. After the filing of a timely and complete appeal, all communication and material required to be provided to the Hearing Examiner shall be submitted to the Hearing Clerk at City of Everett, Code Enforcement, 3200 Cedar Street, Everett, WA 98201 or by email at aweech@everettwa.gov. Materials may be submitted by email, US mail, or hand delivery.
- 5.2 In addition to the duties and authorities established in EMC 1.20.240, the Hearing Examiner shall have the following authorities and duties:
 - a. To rule upon offers of proof and receive evidence;
 - b. To question any person presenting testimony at the hearing;

- c. To hold conferences for settlement or simplification of the issues, or any other proper purpose;
 - d. To require briefs on legal issues; and
 - e. To consider and rule upon all procedural and other motions appropriate to the proceedings.
- 5.3 The Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee, or agent of any municipal department.

SECTION 6: EX PARTE COMMUNICATION

- 6.1 No person, nor his or her agent, employee, or representative, who is interested in a particular matter currently pending before the Hearing Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits or facts surrounding any pending matter. This rule shall not prohibit ex parte communications concerning procedural matters; provided that all ex parte procedural communications shall be directed to the Hearing Clerk and at no time shall parties contact the Hearing Examiner directly absent exigent circumstances. Any such exigent communications shall be cc'd to the other party in the pending matter.
- 6.2 The Hearing Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee or representative, with regard to the merits of a matter.
- 6.3 If a prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Hearing Examiner as to whether to disqualify him or herself as Hearing Examiner for that particular matter as a result of the ex parte communication.

SECTION 7: NATURE OF PROCEEDINGS

- 7.1. **Expeditious Proceedings**
It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Examiner, City staff, and all parties and their agents shall make every effort at each stage of a proceeding to avoid delay.
- 7.2 **Record of Hearing**
- a. Decisions of the Hearing Examiner are based on the record of the hearing.
 - b. All hearings are electronically recorded in an audio or audio/video format, and the recording becomes part of the record. It is necessary that all testimony and argument stated during a hearing be audible on the recording.
 - c. Copies of the record may be obtained by any interested person. Costs of reproduction of the record are the responsibility of the requesting party.

7.3 Accessibility and Accommodation

Proceedings before the Hearing Examiner shall be accessible to the greatest extent practicable. If a hearing-impaired or non-English-speaking party requires an interpreter or other accommodation to participate in a hearing fully and fairly, the City will provide a qualified and impartial interpreter, or provide other necessary accommodation. The party shall notify the contact for the Hearing Examiner at least two weeks prior to the hearing to make the arrangements.

7.4 Virtual Hearings

Hearings will be conducted virtually on a video-conferencing platform, at the discretion of the City in consultation with the Hearing Examiner.

SECTION 8: RIGHTS AND RESPONSIBILITIES OF PARTIES

8.1. City of Everett Staff shall:

- a. Provide timely notice of hearing and, in its exhibits, provide an affidavit of notice of the appeal hearing.
 1. Notice of the appeal hearing shall be served on the appellant via certified US mail. A courtesy copy may also be provided by email if the appellant has provided an email address.
- b. Prepare materials to be presented in support of the City's position at the hearing, including the City's staff report, exhibits of evidence, a numbered list of exhibits, and a witness list of persons the City intends to call to provide testimony at hearing, collectively the "City's materials."
- c. Provide the City's materials to the Hearing Examiner and the Appellant(s) not less than 20 calendar days prior to hearing.
- d. Represent the City's position at hearing.

8.2. Appellants shall:

- a. Participate, or designate a representative to participate on their behalf, at the hearing.
- b. Prepare materials to be presented in support of the appellant's position at the hearing. This can include all relevant documents, records, and evidence addressing Appellant's burden of proof which requires them to show that the NOVO or stop work order appealed from, or the notice of assessed penalties, is inconsistent with EMC or is not supported by substantial evidence, consistent with EMC 1.20.250.D. "Appellant's materials" shall include:
 1. A list of witnesses they intend to call. Witness lists shall identify the name of each person, their relationship to the hearing, and a concise (not more than one sentence) description of the topic(s) that witness will address. An email address and a US mail address shall be provided for each witness the Appellant intends to call to provide testimony at hearing.
 2. A list of the exhibits they intend to offer for the record. Exhibit lists shall be comprised of a numbered list of documents, and it shall indicate a title and a date for each document to be submitted.

3. The exhibits themselves.
 - c. Provide the Appellant's materials to the Hearing Examiner Clerk not less than seven calendar days prior to the hearing.
- 8.3 Delivery and Deadlines. All Appellant materials and City materials shall be delivered in a timely manner to the Hearing Clerk via email, US mail, or hand delivery. Materials are deemed filed upon receipt by the Hearing Clerk during regular business hours not later than 3:00 pm on the date due, unless the Hearing Examiner has specified otherwise. Materials received after 3:00 pm are deemed to have been received on the next business day.
- 8.4 Presence of Legal Counsel at Open Record Hearings or Meetings. Although representation by legal counsel is not required at the hearings, all parties participating in the hearings may be represented by legal counsel of their choice at their own expense. When either party is represented by an attorney, the attorney shall file a Notice of Appearance with the Hearing Clerk and serve a copy of the notice on all other parties.

SECTION 9: CONDUCT OF HEARINGS

- 9.1 Expected Conduct by all parties. All parties, witnesses, and observers at the hearing shall conduct themselves with the civility appropriate to a legal proceeding. Profanity, name calling, verbal abuse, and similar vocal outbursts, and combative, rude, or degrading questions or testimony, are prohibited. Any person(s) engaging in any form of disruptive behavior shall be deemed to have forfeited their right to participate in the hearing process and may be removed. The Hearing Examiner may remove or cause the removal of any person who is being disruptive to the proceedings, or continue the proceedings if order cannot be maintained. The Hearing Examiner shall first issue a warning if practicable.
- 9.2 Reasonable limits. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony subject to any requirements for allowance of testimony pursuant to federal, state, or local law. Cross-examination is permitted as necessary for a full disclosure of the facts, consistent with fairness and due process. The Hearing Examiner shall control the amount and style of cross-examination in the interest of conducting an orderly and timely hearing.
- 9.3 Testimony shall be given by one person at a time. When acknowledged by the Hearing Examiner, the party or witness shall state and spell his/her name and shall make an oath or affirmation of truth. Witnesses are requested to provide testimony in a brief and concise manner. The Hearing Examiner may limit testimony based on relevance or repetitiveness.
- 9.4 Oath or Affirmation. All testimony before the Hearing Examiner shall be given under oath or affirmation of truth.
- 9.5 Content of the Record. The record of the hearing shall include (at a minimum): any pre-hearing procedural orders, all exhibits offered and admitted, the testimony of all witnesses, the audio and/or video recording of the hearing itself, and the decision.

9.6 Optional Prehearing Procedures.

A. At the Hearing Examiner's discretion, a Pre-Hearing Conference may be held to facilitate the issuance of a PHO. A Pre-Hearing Conference is not required for the issuance of a PHO. However, if the Hearing Examiner determines that a Pre-Hearing Conference is appropriate, then:

- 1) All parties shall receive notice of the prehearing conference.
- 2) The prehearing conference may take place via telephone or remote access technology.

B. At the Hearing Examiner's discretion, a pre-hearing order (PHO) may be issued to:

- 1) Identify, clarify, and simplify the issues;
- 2) Decide prehearing motions;
- 3) Establish a schedule for the hearing process, including orders for the exchange of briefs relating to the appeal, motions, and witness and document lists; and
- 4) Address other matters deemed by the Hearing Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.

A PHO may be circulated via e-mail. A PHO may not be appealed.

9.7 Presentation of Evidence at the Hearing

A. Order of Testimony:

1. City: The Code Enforcement Officer shall testify first to set the context for an evaluation of the errors alleged on appeal. The Code Officer's initial presentation shall summarize the factors and events leading to NOVO issuance. The officer's substantive arguments addressing the appeal shall be heard later.
2. Appellant:
 - a. The Appellant has the burden of proof, which means the Appellant must demonstrate through testimony and evidence that the NOVO, stop work order, or notice of assessed civil penalties appealed from is inconsistent with applicable law and/or is not supported by substantial evidence.
 - b. The Appellant's presentation shall consist of relevant information supporting the errors they allege in the appeal, submitted in the form of testimony and documents. The Appellant's case will be limited to the errors expressly stated in the filed appeal.
 - c. The Appellant may submit evidence of any corrective action that has been taken to remediate violation.
3. City: The City shall respond to the errors alleged on appeal and to the evidence and testimony submitted during Appellant's presentation.
4. Rebuttal: After the City has presented its case, the Appellant may submit rebuttal testimony and evidence, if any, as appropriate.

5. Closing arguments. Closing arguments will be made verbally at the conclusion of evidence, unless on the motion of a party or at the Hearing Examiner's motion, written closing argument is requested and allowed.
- B. All witness testimony is subject to cross examination.
- C. The Hearing Examiner may limit testimony and/or the admission of offered exhibits based on relevance.
- D. The Hearing Examiner may question witnesses during witness testimony, cross-examination, or rebuttal. The Hearing Examiner may also pose questions to the parties during any portion of the proceeding.
- E. The Hearing Examiner, at his or her discretion, may call or allow a non-party witness to testify, upon a determination that such testimony will be relevant, will assist the Hearing Examiner in reaching a decision, will not be repetitive, or prejudice the parties.

9.8 Evidence

- A. Hearings generally will not be conducted according to Superior Court or other legal rules relating to evidence and procedure. Any evidence that is relevant, material, and reliable, including hearsay, may be admitted if in the Hearing Examiner's judgment, it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The Hearing Examiner has discretion to decide whether offered evidence is relevant, and is authorized to accord weight to admitted evidence according to the Examiner's professional judgment of its merit.
- B. All documents admitted by the Examiner through the hearing process shall become part of the record.
- C. Any party may seek to admit relevant evidence into the record during their direct, cross-examination and/or rebuttal portions of the hearing, even if it was not disclosed prior to hearing, provided legally adequate foundation (as determined by the Hearing Examiner) for such evidence has been presented by the offering party.
- D. Photographs shall be accompanied by the date of the photograph, the location from which it was taken, and the name of the photographer.
- E. Only the Hearing Examiner has discretion to require a document be filed after the close of testimony. If, at the conclusion of the hearing, the record is held open to allow post-hearing submission of documents, only those documents specifically requested by the Hearing Examiner will be admitted.
- F. The Hearing Examiner may take official notice of generally accepted and recognized facts and law, including but not limited to City ordinances, resolutions, and court

decisions. The Hearing Examiner may also take notice of technical or scientific facts generally accepted as such within the relevant scientific or technical community.

9.9 Briefs and Motions

- A. Briefs. The Hearing Examiner may allow briefs or other memoranda of law in support of or in response to an appeal. Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal except that jurisdictional and other procedural type challenges may be raised in response. If allowed, each party is permitted one primary brief not exceeding 15 double-spaced pages in length, unless otherwise set out in a Pre-Hearing Order. In addition, the Appellant may submit a response brief not exceeding 10 pages in length. The Hearing Examiner may, at her/his own discretion, waive or modify these page limits at the request of the parties to accommodate complex legal and factual issues. A party's initial brief shall be presented at least two weeks before the hearing and any response shall be submitted at least one week prior to the hearing, unless a Pre-Hearing Order states otherwise.
- B. Motions. A party to the proceeding may present a motion to the Hearing Examiner. All motions must be presented in writing and clearly noted as a motion. Motions may be presented as set out in a Pre-Hearing Order, or by filing with the Clerk to the Hearing Examiner and serving the motion on other applicable party/parties at least 10 days prior to the scheduled hearing date unless leave to shorten time is granted by the Hearing Examiner. Motions and responses to motions are not to exceed 15 double-spaced pages in length without prior approval of the Hearing Examiner.

9.10 Continuance of Hearing

- A. Hearing Examiner. If, in the discretion of the Hearing Examiner, more information is necessary to issue a decision on the appeal, the hearing may be continued to a date certain with notice to the parties. Alternatively, arrangements may be made on the record for post-hearing submittal of additional specific evidence or written argument.
- B. At the request of a party. An Appellant or the City may request continuance of a scheduled hearing in writing. The request shall be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny a request for continuance.

SECTION 10: DECISION OF THE HEARING EXAMINER

At the conclusion of the hearing, the Hearing Examiner will take the matter under advisement and will issue a written Decision containing findings, conclusions, and the decision. A copy of the Decision will be distributed to the Appellant and appropriate City personnel by the Hearing Clerk. The Hearing Examiner's Decision is final unless a timely and complete request for reconsideration or appeal is filed.

SECTION 11: RECONSIDERATION

Any party may request that the Hearing Examiner reconsider a Decision by filing a request for reconsideration with the Hearing Examiner no later than seven calendar days from the date the Decision is issued. Such request must identify any findings or conclusions alleged to be erroneous and include supporting argument, but may not introduce new evidence unless allowed by this Section 11. Requests for reconsideration shall be limited to alleged factual errors or mistakes of law, and limited new evidence. The request for reconsideration shall be served on the Code Enforcement Officer and filed with the Hearing Clerk, who will forward it as soon as possible to the Hearing Examiner.

New evidence will only be admitted on reconsideration at the sole discretion of the Hearing Examiner upon a showing of significant relevance, materiality, reliability, and good cause for the delay in its submission.

A Decision on reconsideration will be issued within 10 calendar days of the receipt of a timely request for reconsideration, except in cases in which the Hearing Examiner issues an order establishing a case-specific alternative reconsideration schedule.

A timely filed request for reconsideration will stay (e.g., stop the clock on) the appeal filing deadline established in EMC 1.20.290.C. The appeal timeline will recommence upon issuance of the decision on reconsideration.

SECTION 12: APPEALS OF DECISIONS

A Hearing Examiner's Decision may be appealed to superior court in accordance with RCW Chapter 36.70C and EMC 1.20.290.C.

SECTION 13: CLERICAL ERRORS

Clerical errors in Decision or other parts of the record, and errors arising from oversight or omission, may be corrected on the Hearing Examiner's initiative or in response to a motion of a party.

SECTION 14: CONFLICTS

In the event of a conflict between these rules and a provision of the EMC, the provisions of the EMC controls.

These rules supersede all previously adopted Code Enforcement Rules of Procedure.

Adopted on February 23, 2023.